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The Limits of Civil Disobedience

THE LIMITS OF CIVIL DISOBEDIENCE

Chris Schaeffer

The opportunities for civil disobedience to occur within democratic institutions are abundant. However, the extent to which persons can exercise civil disobedience is the subject of great debate among scholars. To be clear, the term civil disobedience “has been used to apply to a person’s refusal to obey a law which the person believes to be immoral or unconstitutional.”¹ Some believe, as does Howard Zinn, that this practice should entail certain excitable actions that are more extreme and blatantly unlawful in their execution.² Others, like Supreme Court Justice Fortas, believe civil disobedience should ultimately acquiesce to the rule of law within a democratic institution.³ Overall, Fortas’ argument is more defensible because “the motive of civil disobedience does not confer immunity for law violation.”⁴ A democratic government provides alternative methods for countering unjust or unconstitutional laws.

Civil disobedience should not supersede the rule of law because in the American constitutional system, the rule of law is dually prescribed to both citizens and the government. The actions and consequences are limited and equal to both the population and the government that is in power. Fortas defends this claim when he states, “Just as our form of life depends upon the government’s subordination to law under the constitution, so it also depends upon the individual’s subservience to the laws duly prescribed.”⁵ Individuals who practice civil disobedience should be bound by the laws, for if they are not, then the social compact between the citizen and government is broken. Fortas furthers this notion when he claims, “A citizen cannot demand of his government or of other people obedience to the law, and at the same time claim a right in himself to break it by lawless conduct, free of punishment or penalty.”⁶ A mutual acceptance of the Constitution and laws is necessary to preserve democratic institutions and ensure continued success. Socrates ponders this proposal when he asks Crito, “Do you imagine that a city can continue to exist and not be turned upside down, if the legal judgments which are pronounced in it have no force but are nullified and destroyed by private persons?”⁷ Even Howard Zinn, who is in disagreement with this position, recognizes the importance of the state when he explains, “surely the state is an instrument...for the achievement of human values.”⁸ However, if the rule of law is to be determined and enforced on a biased and individual basis, then the state cannot exist to further *any* human values. Therefore, the rule of law should be enforced, even in light of civil disobedience, so that democratic institutions can ensure order and continuation of furthering the human values in pursuance.

Despite the position posited by Fortas, numerous objections can be made to the contrary. The utilization of more extreme measures within civil disobedience is necessary to continually aid the growth of democracy. Also, these forms of disobedience create a quicker avenue for change within the democratic system. Zinn supports these claims when he suggests that civil

¹ Fortas 1968, 30.

² Zinn 2002, 18.

³ Fortas 1968, 30.

⁴ Ibid., 32.

⁵ Ibid., 33.

⁶ Ibid.

⁷ Plato. Hugh Tredennick and Harold Tarrant, trans. 1993. *The Last Days of Socrates*. New York, 90.

⁸ Zinn 2002, 10.

disobedience should “resist the government’s actions against the lives and liberties of its citizens; to pressure, even to shock the government into change; to organize people to replace the holders of power...”⁹ Regardless of the speed of change this strategy suggests, this form of civil disobedience is misapplied for the success and continuation of human values and democracy. Fortas expounds on this point when he states, “Civil disobedience, even in its broadest sense, does not apply to efforts to overthrow the government or to seize control of areas or parts of it by force... These are programs of revolution.”¹⁰ These forms are inferior to peaceful demonstrations of civil disobedience because they undermine the democratic institutions and demand unlawful practices to alter the nature of government.

Although these ‘exciting’ and confrontational forms of disobedience may produce quick and rapid results, they merely perpetuate the extreme measures for all future forms of disobedience. Fortas explains this claim more eloquently when he declares, “Unremitting pressure... will undoubtedly expedite response... but the reaction to repeated acts of violence may be repression instead of remedy.”¹¹ The extreme measures of civil disobedience will be met by more extreme measures to suppress the unlawful and insubordinate actions of the participants. Furthermore, “Violence is never defensible – and it has never succeeded in securing massive reform in an open society where there were alternative methods of winning the minds of others to one’s cause and securing changes in the government or its policies.”¹² If extreme measures are continually utilized to “overthrow the government,” then there will be no *peaceful* transitions from one ruling party to the next. As a direct and dire result, the legitimacy of a democratic institution is undermined for the violent and coercive forms of majority or minority revolution. Instead, “it is basically conscience, justice, and a long and entirely justified view of national interest that impel the... majority to rectify an intolerable situation.”¹³ This mirrors Socrates’ belief, which states that “you must do whatever your city and your country commands, or else persuade it that justice is on your side; but violence against mother or father is an unholy act, and it is a far greater sin against your country.”¹⁴ Ultimately, a democratic government is an arena for debate, contemplation, and compromise in which the conflicting ideologies and beliefs of a diverse citizenry are negotiated to further human values and justice.

⁹ Ibid., 7.

¹⁰ Fortas 1968, 30.

¹¹ Ibid., 38.

¹² Ibid., 40.

¹³ Ibid., 39.

¹⁴ Plato 1993, 91.